

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLD TRADE CENTER
DISASTER SITE LITIGATION

**ROBERT MCNICHOLAS AND MAUREEN
MCNICHOLAS,**

Plaintiffs,

- against -

**THE CITY OF NEW YORK, AND
AMEC CONSTRUCTION MANAGEMENT,
INC., et al.,**

Defendants.

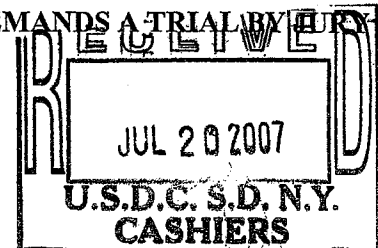
21 MC 100 (AKH)

DOCKET NO.

07 CIV 6548

**CHECK-OFF ("SHORT FORM")
COMPLAINT
RELATED TO THE
MASTER COMPLAINT**

PLAINTIFF DEMANDS A TRIAL BY JURY



By Order of the Honorable Alvin K. Hellerstein, United States District Judge, dated June 22, 2006, ("the Order"), Master Complaints for all Plaintiffs were filed on August 18, 2006.

NOTICE OF ADOPTION

All headings and paragraphs in the Master Complaints are applicable to and are adopted by the instant Plaintiff(s) as if fully set forth herein in addition to those paragraphs specific to the individual Plaintiff(s), which are listed below. These are marked with an "☑" if applicable to the instant Plaintiff(s), and specific case information is set forth, as needed, below.

Plaintiff, by his attorneys SULLIVAN PAPAIN BLOCK MCGRATH & CANNAVO, P.C. complaining of Defendants, respectfully alleges:

I. PARTIES

PLAINTIFF(S)

1. ☒ Plaintiff ROBERT MCNICHOLAS (hereinafter the "Injured Plaintiff"), is an individual and a citizen of North Carolina residing at 10320 Remembrance Trail, Huntersville, North Carolina 28078.
2. Alternatively, ☐ _____ is the _____ of Decedent _____, and brings this claim in his (her) capacity as of the Estate of _____.
3. ☒ Plaintiff, MAUREEN MCNICHOLAS (hereinafter the "Derivative Plaintiff"), is an individual and a citizen of North Carolina residing at 10320 Remembrance Trail, Huntersville, North Carolina 28078, and has the following relationship to the Injured

Plaintiff:

☒ Plaintiff MAUREEN MCNICHOLAS at all relevant times herein, is and has been lawfully married to Plaintiff ROBERT MCNICHOLAS, and brings this derivative action for her loss due to the injuries sustained by her husband, Plaintiff ROBERT MCNICHOLAS.

☐ Parent ☐ Child ☐ Other: _____

4. In the period from September 11, 2001 throughout September 30, 2001, and thereafter, through May 2002, the injured Plaintiff worked for the New York City Fire Department as a Fire Captain at:

Please be as specific as possible when filling in the following dates and locations

☒ The World Trade Center Site

Location(s) (i.e., building, quadrant, etc.) throughout the four quadrants.

From September 11, 2001 throughout the end of September 2001, for details running 12 hours and up to 24 hours, on an every other day basis, and thereafter, including October 2001, November 2001 and December 2001 for regularly scheduled 12 hour shifts, approximately 3-5 times weekly, and other shifts thereafter until on or about the end of May 2002.

Approximately 65 shifts/days in total..

☐ The New York City Medical Examiner's Office

From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total.

☐ The Fresh Kills Landfill

From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total.

☐ The Barge

From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total.

☐ **Other:*** For injured plaintiffs who worked at Non-WTC Site building or location. The injured plaintiff worked at the address/location, for the dates alleged, for the hours per day, for the total days, and for the employer, as specified below:

From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total;
Name and Address of Non-WTC Site
Building/Worksite: _____

*Continue this information on a separate sheet of paper if necessary. If more space is needed to specify "Other" locations, please annex a separate sheet of paper with the information.

5. Injured Plaintiff

☒ Was exposed to and breathed noxious fumes on all dates, at the site(s) indicated above;

*Please read this document carefully.
It is very important that you fill out each and every section of this document.*

☒ Was exposed to and inhaled or ingested toxic substances and particulates on all dates at the site(s) indicated above;

☒ Was exposed to and absorbed or touched toxic or caustic substances on all dates at the site(s) indicated above;

☐ Other: _____

6. Injured Plaintiff

☒ Has not made a claim to the Victim Compensation Fund. Pursuant to §405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.

☐ Made a claim to the Victim Compensation Fund that was denied. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.

☐ Made a claim to the Victim Compensation Fund, that was subsequently withdrawn by Ground-Zero Plaintiff. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.

☐ Made a claim to the Victim Compensation Fund that was granted. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, Ground Zero-Plaintiff has waived her/his right(s) to pursue any further legal action for the injuries identified in said claim.

*Please read this document carefully.
It is very important that you fill out each and every section of this document.*

B. DEFENDANT(S)

7. The following is a list of all Defendant(s) named in the Master Complaint. If checked, all paragraphs pertaining to that Defendant are deemed pleaded herein.

X THE CITY OF NEW YORK

X A Notice of Claim was timely filed and served on **September 21, 2006** and

☐ pursuant to General Municipal Law §50-h the CITY held a hearing on _____ (OR)

X The City has yet to hold a hearing as required by General Municipal Law §50-h

X More than thirty days have passed and the City has not adjusted the claim
(OR)

- ☐ An Order to Show Cause application to
☐ deem Plaintiff's (Plaintiffs') Notice of Claim timely filed, or in the alternative to grant Plaintiff(s) leave to file a late Notice of Claim *Nunc Pro Tunc* (for leave to file a late Notice of Claim *Nunc Pro Tunc*) has been filed and a determination

- ☐ is pending
☐ Granting petition was made on _____
☐ Denying petition was made on _____

PORT AUTHORITY OF NEW YORK AND NEW JERSEY ["PORT AUTHORITY"]

☐ A Notice of Claim was filed and served pursuant to Chapter 179, §7 of The Unconsolidated Laws of the State of New York on

☐ More than sixty days have elapsed since the Notice of Claim was filed, (and)

☐ the PORT AUTHORITY has adjusted this claim

☐ the PORT AUTHORITY has not adjusted this claim.

- ☐ 1 WORLD TRADE CENTER, LLC
☐ 1 WTC HOLDINGS, LLC
☐ 2 WORLD TRADE CENTER, LLC
☐ 2 WTC HOLDINGS, LLC
☐ 4 WORLD TRADE CENTER, LLC
☐ 4 WTC HOLDINGS, LLC

- ☐ 5 WORLD TRADE CENTER, LLC
☐ 5 WTC HOLDINGS, LLC
X AMEC CONSTRUCTION MANAGEMENT, INC.
☐ 7 WORLD TRADE COMPANY, L.P.
☐ A RUSSO WRECKING
☐ ABM INDUSTRIES, INC.
☐ ABM JANITORIAL NORTHEAST, INC.
X AMEC EARTH & ENVIRONMENTAL, INC.
☐ ROBERT R. CORTESE SPECIALIZED HAULING, LLC, INC.
☐ ATLANTIC HEYDT CORP
☐ BECHTEL ASSOCIATES PROFESSIONAL CORPORATION
☐ BECHTEL CONSTRUCTION, INC.
☐ BECHTEL CORPORATION
☐ BECHTEL ENVIRONMENTAL, INC.
☐ BERKEL & COMPANY, CONTRACTORS, INC.
☐ BIG APPLE WRECKING & CONSTRUCTION CORP
X BOVIS LEND LEASE, INC.
X BOVIS LEND LEASE LMB, INC.
☐ BREEZE CARTING CORP
☐ BREEZE NATIONAL, INC.
☐ BRER-FOUR TRANSPORTATION CORP.
☐ BURO HAPPOLD CONSULTING ENGINEERS, P.C.
☐ C.B. CONTRACTING CORP
☐ CANRON CONSTRUCTION CORP
☐ CANTOR SEINUK GROUP
☐ CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
☐ CORD CONTRACTING CO., INC
☐ CRAIG TEST BORING COMPANY INC.
☐ DAKOTA DEMO-TECH
☐ DIAMOND POINT EXCAVATING CORP
☐ DIEGO CONSTRUCTION, INC.
☐ DIVERSIFIED CARTING, INC.
☐ DMT ENTERPRISE, INC.
☐ D'ONOFRIO GENERAL CONTRACTORS CORP

*Please read this document carefully.
It is very important that you fill out each and every section of this document.*

☐ EAGLE LEASING & INDUSTRIAL SUPPLY
☐ EAGLE ONE ROOFING CONTRACTORS INC.
☐ EAGLE SCAFFOLDING CO
☐ EJ DAVIES, INC.
☐ EN-TECH CORP
☐ ET ENVIRONMENTAL
☐ EVERGREEN RECYCLING OF CORONA
☐ EWELL W. FINLEY, P.C.
☐ EXECUTIVE MEDICAL SERVICES, P.C.
☐ F&G MECHANICAL, INC.
☐ FLEET TRUCKING, INC.
☐ FRANCIS A. LEE COMPANY, A CORPORATION
☐ FTI TRUCKING
☐ GILSANZ MURRAY STEFICEK, LLP
☐ GOLDSTEIN ASSOCIATES CONSULTING ENGINEERS, PLLC
☐ HALLEN WELDING SERVICE, INC.
☐ H.P. ENVIRONMENTAL
☐ KOCH SKANSKA INC.
☐ LAQUILA CONSTRUCTION INC
☐ LASTRADA GENERAL CONTRACTING CORP
☐ LESLIE E. ROBERTSON ASSOCIATES CONSULTING ENGINEER P.C.
☐ LIBERTY MUTUAL GROUP
☐ LOCKWOOD KESSLER & BARTLETT, INC.
☐ LUCIUS PITKIN, INC
☐ LZA TECH-DIV OF THORTON TOMASETTI
☐ MANAFORT BROTHERS, INC.
☐ MAZZOCCHI WRECKING, INC.
☐ MERIDIAN CONSTRUCTION CORP.
☐ MORETRENCH AMERICAN CORP.
☐ MRA ENGINEERING P.C.
☐ MUESER RUTLEDGE CONSULTING ENGINEERS
☐ NACIREMA INDUSTRIES INCORPORATED
☐ NEW YORK CRANE & EQUIPMENT CORP.
☐ NICHOLSON CONSTRUCTION COMPANY
☐ OLYMPIC PLUMBING & HEATING
☐ PETER SCALAMANDRE & SONS, INC.
☐ PINNACLE ENVIRONMENTAL CORP
☐ PLAZA CONSTRUCTION CORP.

☐ PLAZA CONSTRUCTION MANAGEMENT CORP.
☐ PRO SAFETY SERVICES, LLC
☐ PT & L CONTRACTING CORP
☐ REGIONAL SCAFFOLD & HOISTING CO, INC.
☐ ROBER SILMAN ASSOCIATES
☐ ROBERT L GEROSA, INC
☐ RODAR ENTERPRISES, INC.
☐ ROYAL GM INC.
☐ SAB TRUCKING INC.
☐ SAFEWAY ENVIRONMENTAL CORP
☐ SEASONS INDUSTRIAL CONTRACTING
☐ SEMCOR EQUIPMENT & MANUFACTURING CORP.
☐ SILVERITE CONTRACTORS
☐ SILVERSTEIN PROPERTIES
☐ SILVERSTEIN PROPERTIES, INC.
☐ SILVERSTEIN WTC FACILITY MANAGER, LLC
☐ SILVERSTEIN WTC, LLC
☐ SILVERSTEIN WTC MANAGEMENT CO., LLC
☐ SILVERSTEIN WTC PROPERTIES, LLC
☐ SILVERSTEIN DEVELOPMENT CORP.
☐ SILVERSTEIN WTC PROPERTIES LLC
☐ SIMPSON GUMPERTZ & HEGER INC
☐ SKIDMORE OWINGS & MERRILL LLP
☐ SURVIVAIR
☐ TISHMAN INTERIORS CORPORATION,
☐ TISHMAN SPEYER PROPERTIES,
☐ TISHMAN CONSTRUCTION CORPORATION OF MANHATTAN
☐ TISHMAN CONSTRUCTION CORPORATION OF NEW YORK
☐ THORNTON-TOMASETTI GROUP, INC.
☐ TORRETTA TRUCKING, INC
☐ TOTAL SAFETY CONSULTING, L.L.C
☐ TUCCI EQUIPMENT RENTAL CORP
☒ TULLY CONSTRUCTION CO., INC.
☒ TULLY ENVIRONMENTAL INC.
☒ TULLY INDUSTRIES, INC.
☒ TURNER CONSTRUCTION CO.

*Please read this document carefully.
 It is very important that you fill out each and every section of this document.*

☒ TURNER CONSTRUCTION COMPANY
☒ TURNER CONSTRUCTION INTERNATIONAL, LLC
☐ TURNER/PLAZA, A JOINT VENTURE
☐ ULTIMATE DEMOLITIONS/CS HAULING
☐ VERIZON NEW YORK INC,
☐ VOLLMER ASSOCIATES LLP
☐ W HARRIS & SONS INC ☐ ZIEGE
☐ WEEKS MARINE, INC. ☐ OTHER:
☐ WEIDLINGER ASSOCIATES, CONSULTING ENGINEERS, P.C.

☐ WHITNEY CONTRACTING INC.
☐ WOLKOW-BRAKER ROOFING CORP
☐ WORLD TRADE CENTER PROPERTIES, LLC
☐ WSP CANTOR SEINUK
☐ YANNUZZI & SONS INC
☐ YONKERS CONTRACTING COMPANY, INC.
☐ YORK HUNTER CONSTRUCTION, LLC

☐ Non-WTC Site Building Owner

Name: _____

Business/Service Address: _____

Building/Worksite Address: _____

☐ Non-WTC Site Lessee

Name: _____

Business/Service Address: _____

Building/Worksite Address: _____

☐ Non-WTC Site Building Managing Agent

Name: _____

Business/Service Address: _____

Building/Worksite Address: _____

II. JURISDICTION

8. The Court's jurisdiction over the subject matter of this action is:

☒ Founded upon Federal Question Jurisdiction; specifically, ☒ Air Transport Safety & System Stabilization Act of 2001.

III CAUSES OF ACTION

Plaintiff(s) seeks damages against the above named defendants based upon the following theories of liability, and asserts each element necessary to establish such a claim under the applicable substantive law:

<input checked="" type="checkbox"/>	Breach of the defendants' duties and obligations pursuant to the New York State Labor Law(s) including §§ 200 and 240	<input checked="" type="checkbox"/>	Common Law Negligence, including allegations of Fraud and Misrepresentation
<input checked="" type="checkbox"/>	Breach of the defendants' duties and obligations pursuant to the New York State Labor Law 241(6)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Air Quality; <input checked="" type="checkbox"/> Effectiveness of Mask Provided; <input checked="" type="checkbox"/> Effectiveness of Other Safety Equipment Provided

*Please read this document carefully.
It is very important that you fill out each and every section of this document.*

<input checked="" type="checkbox"/>	Pursuant to New York General Municipal Law §205-a		(specify: _____); <input type="checkbox"/> Other(specify):
<input type="checkbox"/>	Pursuant to New York General Municipal Law §205-e	<input type="checkbox"/>	Wrongful Death
		<input checked="" type="checkbox"/>	Loss of Services/Loss of Consortium for Derivative Plaintiff
		<input type="checkbox"/>	Other: _____

IV CAUSATION, INJURY AND DAMAGE

9. As a direct and proximate result of defendant's culpable actions in the rescue and/or recovery and/or construction, renovation, alteration, demolition and all work performed at the premises, the Injured Plaintiff sustained (including, but not limited to) the following injuries:

*Please read this document carefully.
It is very important that you fill out each and every section of this document.*

<input type="checkbox"/>	Cancer Injury: Date of onset: _____ Date physician first connected this injury to WTC work: _____	<input type="checkbox"/>	Cardiovascular Injury: Date of onset: _____ Date physician first connected this injury to WTC work: _____
<input checked="" type="checkbox"/>	Respiratory Injury: clinical asthma, airway hyperreactivity, respiratory insufficiency and diminished lung capacity and other injuries, the full extent of which have not yet been determined. Date of onset: On or about July 14, 2006, in anticipation of retirement, Injured Plaintiff sought a comprehensive pulmonary evaluation by the Fire Department. He was administered a pulmonary function test and a methacholine challenge test at that time. Previously, upon information and belief, Injured Plaintiff passed a pulmonary function test in April 2005. In consequence of the results of the pulmonary function test and methacholine challenge test of July 2006, the Injured Plaintiff was diagnosed with clinical asthma, airway hyperreactivity, respiratory insufficiency and diminished lung capacity. His methacholine challenge score was borderline, measuring a reduction of about 21%. Date physician first connected this injury to WTC work: On or about July 20, 2006 and/or thereafter. On July 20, 2006, the Medical Committee of the Fire Department determined that his respiratory impairment, recently assessed and diagnosed, was permanent, and indicated that its onset followed World Trade Center exposure.	<input type="checkbox"/>	Fear of Cancer Date of onset: _____ Date physician first connected this injury to WTC work: _____
<input type="checkbox"/>	Digestive Injury: Date of onset: _____ Date physician first connected this injury to WTC work: _____	<input type="checkbox"/>	Other Injury: Date of onset: _____ Date physician first connected this injury to WTC work: _____

NOTE: The foregoing is NOT an exhaustive list of injuries that may be alleged.

*Please read this document carefully.
It is very important that you fill out each and every section of this document.*

10. As a direct and proximate result of the injuries identified in paragraph "1", above, the Ground Zero-Plaintiff has in the past suffered and/or will in the future suffer the following compensable damages:

<input checked="" type="checkbox"/> Pain and suffering	<input checked="" type="checkbox"/> Expenses for medical care, treatment, and rehabilitation
<input checked="" type="checkbox"/> Loss of the enjoyment of life	<input checked="" type="checkbox"/> Other:
<input checked="" type="checkbox"/> Loss of earnings and/or impairment of earning capacity	<input checked="" type="checkbox"/> Mental anguish
<input checked="" type="checkbox"/> Loss of retirement benefits/diminution of retirement benefits	<input checked="" type="checkbox"/> Disability
	<input type="checkbox"/> Medical monitoring
	<input type="checkbox"/> Other: _____

11. As a direct and proximate result of the injuries described *supra*, the derivative plaintiff(s), if any, have in the past suffered and/or will in the future suffer a loss of the love, society, companionship, services, affection, and support of the plaintiff and such other losses, injuries and damages for which compensation is legally appropriate.

*Please read this document carefully.
It is very important that you fill out each and every section of this document.*

WHEREFORE, plaintiff(s) respectfully pray that the Court enter judgment in his/her/their favor and against defendant(s) for damages, costs of suit and such other, further and different relief as may be just and appropriate.

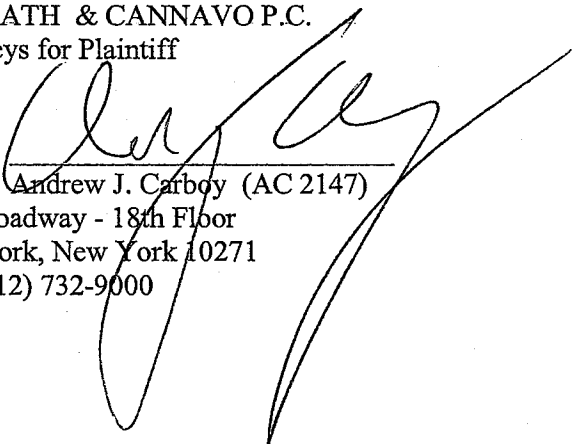
Plaintiffs demand that all issues of fact in this case be tried before a properly empanelled jury.

Dated: New York, New York
July 16, 2007

Yours, etc.

SULLIVAN PAPAIN BLOCK
MCGRATH & CANNAVO P.C.
Attorneys for Plaintiff

BY:



Andrew J. Carboy (AC 2147)

120 Broadway - 18th Floor
New York, New York 10271
Tel: (212) 732-9000

*Please read this document carefully.
It is very important that you fill out each and every section of this document.*